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November 10, 1993


Mr. William Caton
Secretary
Federal Communications Commission
1919 M Street, NW, Room 222
Washington, D.C. 20554

Re: Comments of Baraff, Koerner,
Olender & Hochberg, P.C.
Competitive Bidding
PP Docket No. 93-253

Dear Mr. Caton:

Enclosed please find an original and nine copies of Comments in the above-referenced matter. Should you have any questions regarding this matter, please contact the undersigned counsel.

Very truly yours


Susan R. Athari
Baraff, Koerner, Olender
& Hochberg, P.C.

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FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

In the Matter of

Implementation of Section 309(j)
of the Communications Act

Competitive Bidding

PP Docket No. 93-253

COMMENTS OF BARAFF, KOERNER, OLENDER & HOCHBERG, P.C.

Baraff, Koerner, Olender & Hochberg, P.C. ("BKOH"), by and through its attorneys, hereby submits these Comments in the above-referenced Notice of Proposed Rulemaking. BKOH is a professional corporation and law firm specializing in the various phases of broadcast, cable television, programming, negotiations, common carrier matters and emerging technologies.

BKOH requests that the Commission reconsider its proposal for combinatorial bidding in awarding the 51 MTA licenses on each of the two 30 MHz spectrum blocks.¹ Rather than institute both a nationwide sealed bidding procedure while simultaneously entertaining oral bids for individual MTA and BTA licenses, the Commission should require each applicant to bid a separate price for each MTA individually. Likewise, the Commission should not implement combinatorial bidding to facilitate grouping of broadband PCS licenses with BTA service areas, as proposed in

¹In re Implementation of Section 309(j) of the Communications Act Competitive Bidding, Notice of Proposed Rulemaking, PP Docket 93-253, FCC 93-455, para. 120 (released on October 12, 1993).

the Notice.² The Commission should implement individual, separate bids for BTA licenses as well.

The Commission's proposal of permitting nationwide sealed bids for all MTAs does not necessarily permit a demonstration of a higher valued use for a larger service area. The sealed combinatorial MTA/BTA bid proposal has the inherent likelihood of Balkanization of PCS among national providers and designated entities -- to the detriment of all other entities proposing (or who might otherwise want to propose) regional and/or BTA-specific service areas.

Successful PCS implementation must accommodate local and regional service providers who are not necessarily designated entities. Many of those entities can be expected to include regional and locally based businesses (that are not designated entities) with realistic, funded PCS programs for implementing inherently non-speculative PCS service. These entities could include media companies, such as station groups and cable systems, as well as non-media companies with distended regional facilities. Eliminating the combinatorial bid feature will ensure broader participation among service providers and would foster the desired diversity for PCS services and offerings.

Conversely, the proposed combinatorial bidding process likely will impede the desired public interest benefits the Commission envisioned for PCS. Regardless of however large is

²Id. at para. 123.

the resultant oral MTA bid, it stands to be paled in relative comparison with the aggregate amount similarly bid for each of the MTAs. There will likely be MTAs or BTAs that did not receive a bid or received a relatively low bid, thereby skewing downward the aggregate amount of all bids submitted for the MTAs or BTAs. As a result, the sealed bid could more than likely be expected to exceed the aggregate of the oral auctions for individual MTAs or BTAs. The national filer would receive the license although its bid did not reflect the true value of the component MTAs or BTAs, as evidenced by the values established by oral bidding. By ignoring individual bids for smaller service areas, the proposed combinatorial bidding process discourages the formation of regional groups for submission of bids to provide significant PCS service on a less than nationwide basis. The elimination of combinatorial bidding will ensure that companies interested in less than all of the MTAs or BTAs will have an opportunity to bid against every participant for the MTA or BTA and that single filers that are not designated entities are not prejudiced.

Respectfully submitted,

BARAFF, KOERNER, OLENDER & HOCHBERG, P.C.



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